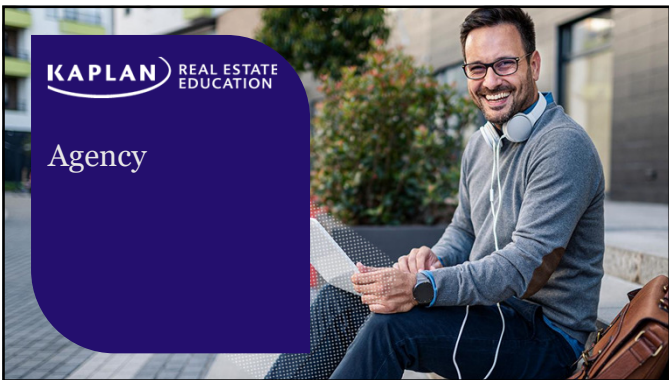


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Principal

- The **principal** is the consumer utilizing the services of an agent-buyer, seller, owner, tenant.
- The principal is also known as a **client**.

Agent


- The agent is hired by the principal and is also known as a **fiduciary**.
- The agent's words and actions are the same as if the principal had done so themselves.
- Only the **Broker of Record** (BOR) can be an agent representing a principal in a real estate transaction. All contracts **belong to the BOR**.
 - Associate licensees are never the agent of a seller or a buyer.
 - Associate licensees are agents of the Broker of Record.


Fiduciary duties

- Agents owe fiduciary duties to Principals
 - **Obedience**: agents must obey all legal directives from the principal.
 - **Loyalty**: agents must put the principal's best interest above their own.
 - **Disclosure**: agents must disclose all material facts.
 - **Confidentiality**: information that is not a material fact must be kept confidential.

Fiduciary duties


- **Accounting**: must account for anything of value that they were entrusted with.
- **Reasonable skill and care**: agents must use reasonable skill and care in the performance of their duties to the principal.






Third party

- Agency relationships are **2-party** relationships: principal and agent.
- The third party, also referred to as a **customer**, although not part of the agency, is affected by the agency.
 - A person visiting an open house is shown the home by the **listing agent** (who works for the seller). The listing agent is performing their tasks within the agency, hence affecting the third party.



Third party

- Third parties are not owed fiduciary duties,
- Third parties are owed
 - Honesty
 - Fair dealing
 - Disclosure
- Third parties are **not owed confidentiality**.
- They should receive the Disclosure Regarding Agency Relationships early, so they do not believe that they are protected with confidentiality.



Question

An unknown party enters into an open house and is given a tour of the home. That party is

A. a customer.
B. a client.
C. a principal.
D. a lookiloo.

Answer

- A. a customer.
- The customer is a third party, not a part of the relationship between the principal (seller here) and the agent. The customer may become another principal at a later time.

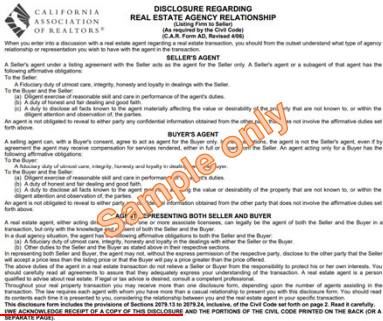


Disclose

- California law requires a "Disclosure of Agency Relationship" form to be presented to a **customer** and receipt acknowledged by them at the **first substantive opportunity** (more than casual).
- This form identifies the three possible relationships
 - Representing only the seller
 - Representing only the buyer
 - Acting as a dual agent
- The customer's signature only acknowledges receipt of the form; it does not create an agency relationship.


Disclose

- This form must be acknowledged before an agency relationship is created and a **client** relationship is established.
- This form may not result in an agency relationship being formed and the consumer would remain a customer or **third party**.




Elect

- When the type of agency is recognizable (single or dual), then the election is made.
 - With a seller, it is recognizable upon the receipt of an offer.
- With a buyer, it is recognizable
 - before showing a listing whose purchase would result in a dual agency.
 - All listings belong to the broker. If another person employed by that broker brings a buyer to that listing, that showing could result in a dual agency.
 - Before the writing of an offer



Confirm


- When the agent makes the election, that election is disclosed to the client and confirmed by them in writing.
- The buyer should confirm the following:
 - Before being shown a property that, if purchased, would result in a dual agency
 - Before any offer is made
- The seller should confirm before any offer is presented to them.



Question

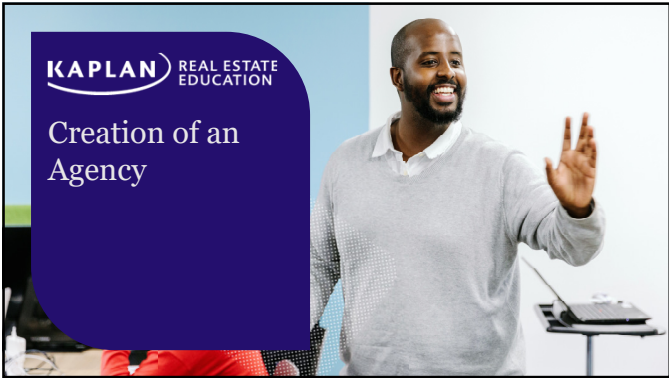
When an agent obtains a new listing from a seller, they should

- A. provide the seller with a Confirmation of Agency Relationship.
- B. obtain a deposit from the seller.
- C. have already provided the seller with a “Disclosure of Agency Relationship” form.
- D. calculate their anticipated commission and begin to spend the money.



Answer

- C. have already provided the seller with a “Disclosure of Agency Relationship” form.
- Before the establishment of an agency relationship, this form must be provided to the possible client.




Express agency

- The best way of creating an agency is expressly
 - “May I be your agent?”, “Yes you may”
- An agency can be created orally or in writing

A photograph of two people, a man and a woman, shaking hands in front of a yellow house with a blue roof. The man is wearing a white shirt and a blue tie, and the woman is wearing a grey blazer.


Express agency

- A listing agreement creates both an agency and a compensation agreement.
 - Compensation agreements must be in writing to be enforceable.
- Creation of an oral listing agreement will result in an enforceable agency being created without an enforceable compensation agreement.



Implied agency


- An implied agency is created by the actions of the people, not their words or their writings.
- A real estate licensee may not be aware they created an implied agency.



Question

The listing agent greets a stranger at an open house. They show the home, but the party is not interested in that home. The agent learns about their wants and offers to show them another home. No paperwork is done between them.

A. There is an agency between them.
B. There is no agency between them.
C. There may be an agency between them.
D. The agent breached its fiduciary duties to the seller.



Answer

- C. There may be an agency between them.
- It is not unreasonable to believe that the potential buyers now believe that the agent is acting on their behalf, creating an implied agency. The agent should have already provided the consumers with the “Disclosure of Agency Relationships” form for their signature and discussed an expressed agency with them.



Dual agency

- California allows dual agency
 - A dual agent represents both sides of a transaction
 - Buyer/seller
 - Owner/tenant
- A dual agent owes **fiduciary duties** (OLD CAR) to both parties

Dual agency

- The licensee will have limited duties of disclosure and must protect both party's confidentiality.
- It requires disclosure and the written consent of both parties.
- Undisclosed dual agency is illegal.

An illustration of a woman with dark hair, wearing a blue business suit, shown in profile. In the background, there are two small, stylized human figures, one in white and one in red, standing on a blue surface.



Scope of agency

- Some agents may only speak on behalf of the principal. This is a **specific agency**.
 - A listing agent may speak for the seller, but may NOT sign a contract for the seller.
- Some agencies allow the agent to contractually obligate the principal. This is a **general agency**.
 - A property manager of an apartment complex may be allowed to sign leases on behalf of the owner.
 - A power of attorney (attorney-in-fact) is usually a general agency.



Listing agreement

- A listing agreement is between the owner and Broker of Record.
 - Exclusive listing, right to sell, and agency, **must have stated start and finish dates**

CALIFORNIA REAL ESTATE LISTING AGREEMENT

I, The Parties. This Real Estate Listing Agreement ("Agreement") made on _____, 20____, is between:

Seller _____ ("Seller") with a mailing address of _____ City of _____ State of _____

AND

Agency _____ ("Broker") of _____ ("Agency") with a mailing address of _____ City of _____ State of _____ Collectively, the Seller and Agency shall be referred to as the "Parties".

Listing agreement

- Non-exclusive, open listing, is automatically terminated if the property is sold by another party.
- All must include
 - Listing price
 - Terms
 - Compensation (must be negotiable)
 - Multiple listing clause
 - Safety clause

Listing agreement

- Brokers must
 - Write any offer requested by the buyer
 - Present all offers
 - Put all agreements in writing
 - Make a good-faith effort to find a ready, willing, and able buyer
 - Assist seller in making all mandated disclosures

Property management

- The owner is the principal, the Broker of Record is the agent
- The property manager may be responsible for:
 - Budgeting
 - Accounting
 - Leasing
 - Tenant relations

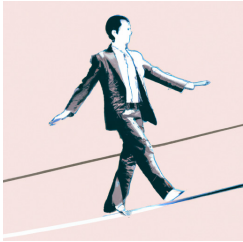



Property management

- Repairs
- Improvements
- Maximizing the property's yield

Agent disclosures


- An agent that may have an interest contrary to the principals must disclose that:
 - Agent is a principal
 - Relative is a principal
 - Close business associate is a principal
- The concern is that the agent leans towards favoring someone other than their principal.





Buyer broker agreement


- This is between a buyer and a Broker of Record
- May be exclusive
 - During a specific time frame, all properties within a geographical area
- May be non-exclusive
 - Limited to one property
- Creates a compensation agreement



Question

When a property goes into escrow, the agent representing the buyer is referred to as

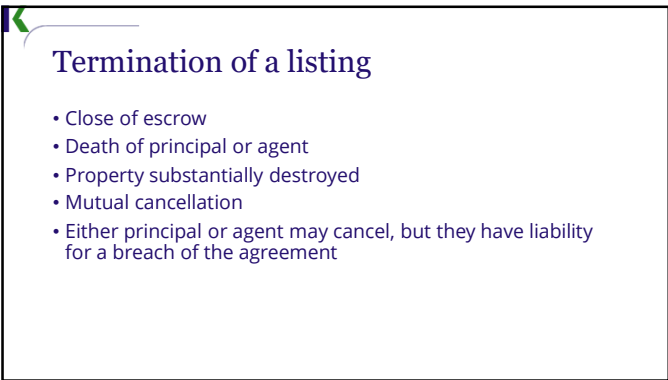
- A. buying agent.
- B. selling agent.
- C. purchasing agent.
- D. none of the above.




Answer

- B. selling agent.
- Listing agent represents the seller.
- **Selling agent** represents the buyer.
- It is the agent representing the buyer that actually consummates the sale.










What is an appraisal?

- An appraisal is the act of process or developing an **opinion** of value
 - For a specific purpose
 - For a specific person
 - Of a specific property
 - As of a specific date
 - Based on established facts



Price verses value

PRICE = WHAT YOU ARE WILLING TO PAY

VALUE = WHAT SOMETHING IS WORTH

- Are there times in the market when buyers will pay more than a property is worth?
- Are there times in the market when buyers will pay less than a property is worth?



Date of an appraisal


APPRAISAL = DEFENDABLE OPINION

A past appraisal could be for the IRS- Present could change in a day- Future is a feasibility study

PAST
5 YEARS AGO

PRESENT
TODAY


FUTURE
2 YEARS FROM NOW



Question


Appraisals are only valid for

- A. the date the appraiser last inspected the property.
- B. the date the appraisal was ordered.
- C. the date the loan funds.
- D. the date indicated in the appraisal report.




Answer

- D. the date indicated in the appraisal report.
- Beware of that word, “only.” *Usually*, appraisals are valid as of the date a property is inspected—but *not* always! Instead, an appraisal is valid for the *date* an appraiser *cites in the report*.




What will impact value

- Real property (personal property is not included in value)
- Fixtures/trade fixtures
- Bundle of rights
- Public restrictions
- Private restrictions
- Legal rights and interests (freehold/leasehold)
- Easements, license, and encroachments
- Rights associated with the property (water, air, MOG) (mineral-oil-gas)




Types of appraisal reports

- A **self-contained report** is synonymous with a **narrative report**—it is the **most detailed and complete form** of report.
- **Restricted use report** = letter-form report. It states its limitations or restrictions (e.g., the method of valuation used or property interests valued)
- **Summary report** = short-form report (e.g., for **loans**)



Memory tool for the elements of value

- **DUST**
 - Demand
 - Utility
 - Supply
 - Transferability



Question

The essential elements of value are


A.PITI.
B.PETE.
C.DUST.
D.ECOA.

Answer

- C. DUST.
- **PITI** is tied to joint tenancy (possession, interest, title and time).
- **PETE** is the memory aid for governmental rights: police power, escheat, taxes, and eminent domain.
- **ECOA** is the federal Equal Credit Opportunity Act.


Appraisal report

- In the appraisal, you need to use the valuation method that best suits your clients’ needs. The most common reason for an appraisal is for a loan and a short form is used. It is a standardized form the government accepts in the secondary market.




Approaches to value

- The most common and most tested approaches to value are:
 - Cost approach
 - Sales comparison/market approach
 - Income approach




Cost approach

- First step is to calculate the cost to replace (build a replacement building) or reproduce (build an exact replica) of the appraised structure, today.
- We also have to calculate the **depreciation of the building only** and where it is coming from.
- Our last step will be to determine the value of the land by using the market approach. We may have to use comps where we have an improved lot similar to ours and deduct the value of the building to estimate the value of the remaining lot.




Methods to calculate cost

- Quantity survey method:
 - The **quantity survey also known as a narrative** method is a highly involved process of estimating the cost of new construction by detailing raw material and installation costs. It itemizes all construction costs, both direct and indirect:
 - Direct costs = materials and labor
 - Indirect costs = permits, taxes, profit, insurance, and other overhead
 - It's the **most accurate**—but rarely used, with the exception of a lawsuit due to a condemnation action.



Methods to calculate cost


- **Square footage is not the most accurate method**, but it is the method most often used. It is easy for the consumer to understand. You measure the **OUTSIDE** of the residence separate from the garage. You calculate the cost per square foot to replace the home of this quality by using comps. Then you measure the garage and use the same method. They will have different costs per square foot due to the improvements in the home.
- Inside measurements are for calculating living space not square footage.



Age of building

- Using the cost approach requires the appraiser to be familiar with the quality of construction in the area and the elements the building is subject to. Unless it is brand new, the economic life of the building is subjective.


Economic life = how long the building will produce income
Effective age = how old the building appears to be
Chronological age = how old the building actually is



Question

The most accurate method to calculate the cost to build is

- A. quantity survey method.
- B. narrative method.
- C. cost per square foot method.
- D. both A and B are correct.



Answer

D. both A and B are correct.

The quantity survey method and the narrative method are the same approach.

Cost approach

Cost New Today

Reproduction cost
Replacement cost

- Depreciation
(Building Only)

Physical
Functional
Economic

+ Land Value

Use market approach

Total Value

Example

Cost new today		\$500,000
Minus Depreciation		
Physical	\$10,000	} -\$85,000
Functional	\$50,000	
Economic	\$25,000	
Add value of the land		+150,000
Value		\$575,000

Question


Under the cost approach, the cost to build an exact replica of a structure new today is called

A. replacement cost.

B. reproduction cost.

C. construction cost.

D. advancement cost.



Answer

B. reproduction cost.

Reproduction cost is the expense needed—today—to build an *exact replica* of an existing structure. It would rebuild with the same functional obsolescence as the original structure.

Replacement cost is the expense to build today a new structure with the same function or utility as the existing one. But—it would cure any functional obsolescence.



Question

In the cost approach,

A. both improvements and land are depreciated.
B. neither improvements nor land are depreciated.
C. only land is depreciated.
D. only improvements are depreciated.



Answer

D. only improvements are depreciated.

Only improvements are depreciated—land is **not** depreciated.

Rationale: Only **improvements** have limited, useful lives (meaning that buildings will wear out sometime in the future and need to be replaced).

In contrast, **land** is theoretically considered perpetual and indestructible, and will never need to be replaced.

Sale comparison/market approach

- Our SUBJECT property is the property we are appraising
- Find similar properties recently sold as “comparables”
- Adjustments to the “comparables”
- Comp better, we will **deduct** from the sales price
- Comp worse, we will **add** to the sales price
- Our goal is to make the comparable as close to our subject as possible

Example

Comp #1

4 bedrooms
3 bathrooms

Subject Property

3 bedrooms
2 bathrooms


Comp #2

2 bedrooms
2 bathrooms

Question

Which of these is the best approach to value a single-family, two-story home?


- A. Income approach
- B. Cost approach
- C. Market approach/sales comparison approach
- D. Price per square approach



Answer


C. Market approach/sales comparison approach

This is the best method for most residential properties.



Income capitalization approach

- The income capitalization approach is based on the **net income**, or investment return, that a buyer expects from the property. The price a buyer will pay is determined by the probable return the property will yield from the investment.
- **Remember that the income capitalization approach is based on net operating income, which is expressed as an annual amount.**



Finding net operating income

Potential annual gross income	\$66,000
-Bad debt (2%)	-1,320
-Vacancy (3%)	-1,980
Effective gross income	\$62,700
-Operating expenses	-29,400
=Net operating income	\$33,300

\$33,300 is the number the appraiser uses to calculate value. **No deduction for debt service.**

Capitalization approach formula

Net operating income divided by the capitalization rate = property value

NOI

R

X

V

6

2

X

3

Capitalization Rate

Rate changes

The capitalization rate is telling the investor the risk involved.

	RATE	INCOME	VALUE	
↑	12%	\$10,000	\$83,000	↓
	10%	\$10,000	\$100,000	
↓	8%	\$10,000	\$125,000	↑

Question

All of the following formulas are correct, except

A. rate x value = net income.


B. income divided by value = rate.

C. income divided by rate = value.

D. rate divided by value = net income.


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Answer


D. rate divided by value = net income.



Question

If the capitalization rate goes up, the risk

- A. goes up.
- B. goes down.
- C. stays the same.
- D. is none of these. The capitalization rate has no impact on value.



Answer

- A. goes up.
- The capitalization rate reflects the **risk involved** in the return of/on your investment in a given property. If the rate goes up, the risk goes up. The **value** of the property **goes down**.

Progression

This is where a smaller home is located in an area of larger, more valuable homes. This placement will add value to the smaller home.



Regression

This is where a larger home is in a neighborhood with smaller homes. This placement will cause the larger home to lose value.



Substitution

- The principle of substitution—the value of anything is established by the cost to acquire an equally desirable, available substitute.
- **This principle impacts every appraisal method.** This is one of the most important principles of appraisal, as it is used in **every approach to value**. It is the basis of all of the appraisal methods.

Question

The best approach to value a church is the

A. cost approach.

B. income approach.

C. sales comparison approach.

D. price per square foot method.

Answer

A. cost approach.

This method is best for a unique property, such as a church.

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California Contracts





K

Creation of a contract

Express: Communicated between the parties


- Oral
 - Most contracts for the transfer of an estate in real estate must be in writing to be enforceable (**Statute of Frauds**).
 - **Exception:** Lease for **1 year or less** is enforceable if made orally
 - Other oral contracts may be valid but unenforceable.
- In writing
 - A valid contract in writing may be enforceable.

K

Creation of a contract

- **Implied**
 - Created actions, words, and conduct
 - May be valid and enforceable
 - A party may not even be aware that it exists


A small, square photograph showing three people in a casual setting. On the left, a woman with long brown hair is smiling. In the center, a man with short dark hair is also smiling. On the right, another woman with dark hair is looking towards the other two. They appear to be in a friendly conversation.



Question

An implied contract can be created by your

- A. actions.
- B. words.
- C. conduct.
- D. all of the above.



Answer

- D. all of the above.



Steps to create a real estate contract

- **Consent**
- **Offer**
 - Offeror gives the offer to offeree
 - Offeree may
 - Accept
 - Reject
 - Counteroffer
 - Offeree becomes offeror
 - Original offer is “dead”

Steps to create a real estate contract

- **Acceptance**
 - Must be **unqualified**
 - Any qualification makes it a counteroffer




Elements of a contract

- **Communication of acceptance**
 - May be oral or in writing
 - The contract is **formed** only upon the communication of acceptance. If one of the parties dies or becomes incompetent before the completion of the contract, it is still valid.


Elements of a contract

- **Capacity**
 - 18 years old in California
 - In California, a real estate contract by a minor is void unless the minor is emancipated.
 - May be emancipated by one of the following:
 - Legally emancipated by the court
 - Join the military
 - Get married



Elements of a contract


- Sane
 - Judicially deemed incompetent
 - Not judicially deemed incompetent but lacking the understanding of the significance at the moment
- **C**onsideration
 - Anything of value
 - Generally not the deposit
- **L**awful objective
 - The purpose and the consideration



Question

All of the following are legal elements of a contract, except

- A. consent.
- B. capacity.
- C. consideration.
- D. earnest money deposit.



Answer

- D. earnest money deposit.
- Earnest money is not required. The primary purpose of earnest money is to serve as a source of payment of damages, should the buyer default.
- Anything the seller accepts as consideration meets the requirement of the contract.

Elements of a contract

Consent

Capacity

Consideration

Lawful Objective

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Classification of
Contracts

Classification of contracts

• Valid

• Has all of the elements

• May be enforceable


• Voidable

• All elements appear to be there, but one or more is defective

• Fraud


• Misrepresentation

• Menace or duress



Classification of contracts


- **Void**
 - Missing one or more element
 - Unenforceable



Question

Ryan Sullivan, a married young man who is 17 years old, made an offer to purchase real property. The offer was accepted and communicated back to Ryan. This is a contract.

A. valid
B. void
C. voidable
D. unenforceable



Answer

- A. valid
- Even though Ryan is only 17, he is emancipated due to having **been married**. He can contract to purchase a home (watch out for the word *unmarried*).

Between the age of 14-17, a person can become emancipated by:

1. Joining the military
2. Getting married
3. Court order



Termination of offer

- **Revocation** by offeror
- Lapse of time
 - Specified in the offer
 - Inferred
- Destruction of the premises
- Death or incapacity of either offeror or offeree before communication of the offer.

A red alarm clock with two bells and a white face, set against a solid red background.

Question

Paul Rowland made an offer on a home, it was accepted by the seller, George Hansen. Prior to communication of acceptance back to Paul, George died. What is the status of this contract?

- A. It is a valid contract, and George's heirs will have to complete the sale.
- B. We do not have a contract.
- C. The contract is voidable.
- D. Paul has the right to move forward with the purchase.

Answer

B. We do not have a contract.
These three requirements must be met:

1. Offer
2. Acceptance
3. Communication of acceptance back to the offeror

Because George died prior to communication, we have no contract.

Termination of a contract

- Full performance
- Mutual rescission
- **Novation**
- Legal impossibility
- Death of a party

- Most contracts are not terminated by death
- Personal service contracts may be

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Broker-Consumer
Agreements



Listing agreement

- Between Broker of Record (agent) and seller (principal)
- Exclusive
 - **Exclusive Right to Sell**
 - Residential Listing Agreement

You get paid a commission, regardless of who sells the property.



Listing agreement

- **Exclusive Agency Agreement**
 - Residential Listing Agreement-Agency (agent will **NOT** earn a commission if the **owner** sells the property)
 - Open listing (first person to bring in an accepted offer cancels the listing agreement to all others)
 - Advance fee (collected to pay for advertising and other selling expenses) must be sent to DRE for approval at least 10 days before use

Buyer representation agreement

- Non-exclusive
 - Usually limited to specified property(s)
 - Usually irrevocable for specified period of time



K

Residential purchase agreement

- May also be a residential purchase agreement and/or joint escrow instructions
 - Identifies all of the elements of the transaction that must be met before the transaction can close. The escrow holder is a **dual agent**. This is where “time is of the essence” is an important part of the closing process.

K

Option contract

- The seller **agrees to sell** for a specified period and with specified terms IF the buyer decides to sell. It is considered a **unilateral contract**, since only one party has made a promise. Must have consideration to be enforceable. It is common with developers acquiring raw land. Most beneficial for the optionee (potential buyer)
- **Lease-option**
 - The tenant (lessee) may desire to buy the property in the future. Part of each lease payment will go toward the down payment.

Right of first refusal

- If the seller does decide to sell, the person with the first right of refusal must be given the opportunity to purchase the property. A simple letter or note will qualify as a first right of refusal. No specific contract needs to be signed in advance.
 - Most **beneficial to the seller**
 - Not required to sell


Possessory agreements

- Estate for years
 - **Lease**
 - It requires a beginning and ending date.
- Periodic estate
 - **From one period to another**
 - **Most common is month to month**




Possessory agreements

- Estate at will
 - Agreement is **implied**
 - In California, notice is needed to terminate
- Estate at sufferance
 - **This is the lowest interest** a person can have in property.
 - Tenant came into possession lawfully, but the lease period has ended. If the owner (landlord) accepts any payment from the tenant, it becomes a periodic tenancy.



Financing agreements


- **Promissory note**
 - An unconditional written promise of one party to pay a certain sum of money to another, at a specified time.
 - It is a negotiable instrument and can be sold on the open market. Most importantly, it is **evidence of a debt**. It can not be recorded, since it is personal property. It is typically secured by a Trust Deed in California.



Question

A promissory note is a and a trust deed is .

A. evidence of a debt/security for the debt
B. security for the debt/evidence of the debt
C. both are considered evidence of the debt
D. neither are considered security instruments



Answer

- A. evidence of a debt/ security for the debt
- You can not record a promissory note, as it is a personal property instrument. It is typically secured by a deed of trust in California.

Question

An estate for years was created between an owner and tenant. To end this estate, the owner must provide at least how many days notice?

A. 30 days

B. 60 days

C. 10 days

D. No notice is required

Answer

• D. No notice is required

• An estate for years has a beginning and ending date in the contract. It is also known as a "lease". Therefore, no notice is required to end the contractual relationship.

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California Finance

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Promissory note

- May be thought of as an IOU from a borrower to the lender
 - Unilateral agreement wherein the borrower promises to repay the loan via specific terms
 - Signed by only the borrower
 - Interest rate, loan amount, loan term
 - **Acceleration clause**
 - Upon default, the lender may demand repayment in full, cancelling the remaining term of the debt

Promissory note

- **Alienation clause**
 - Also known as a **due on sale** clause
 - This allows the lender the option, upon the transfer of the property, to accelerate the loan and demand that the loan be repaid immediately
- By itself, the promissory note creates an unsecured personal obligation

Collateral


- Collateral, also referred to as security, provides the lender recourse, beyond the borrower's promise, should a default occur. The lender holds a security interest in the real property.
- In the case of a real estate loan, the collateral is the real property.
 - Should a default occur, the lender may have the collateral sold, hopefully the resulting proceeds will satisfy the debt.


Deed of trust

- A deed of trust, also known as a trust deed is the favored security interest in California. As such, it provides collateral for an obligation created by a **promissory note** (evidence of a debt).
- The deed of trust is a three-party instrument.
 - Borrower is the **trustor**.
 - Lender is the **beneficiary** (benefits from the trust).
 - **Trustee** is a neutral third party who is conveyed bare legal title to the property by the trustor (title theory).

Mortgage


- A mortgage is a two-party security instrument
 - Borrower is the mortgagor who gives the mortgage to the lender (**borrower/mortgagor**)
 - Lender is the mortgagee (**lender/mortgagee**)





Common clauses


- Acceleration—entire balance due upon default
- Alienation (due-on-sale)—entire balance due upon transfer of title
- **Defeasance**—upon payment in full of the loan, the security interest must be returned
 - **Deed of reconveyance (deed of trust)**
 - **Satisfaction of mortgage (mortgage)**
- **Power of sale**—the ability of the collateral holder to foreclose without any court interaction (non-judicially)



Question

An acceleration clause will allow the lender the right to

- A. increase the interest rate of the loan if the prime interest rate rises.
- B. increase the interest rate of the loan if the loan is in default.
- C. foreclose on the loan.
- D. demand payment in the full of the loan if the loan is in default.



Answer

D. demand payment in the full of the loan if the loan is in default.



Foreclosure

- If a borrower is in default on their loan obligations, the lender may foreclose on the collateral. This allows for the collateral (usually the home) to be sold and hopefully pay off the loan.
- The most common default is nonpayment of the loan, other defaults would include
 - Nonpayment of property taxes
 - Destruction of some or all of the collateral
 - Nonpayment of property insurance

Foreclosure

- Failing to adequately maintain the property (waste)
- Not paying off the loan upon the sale of the property (if not allowed in the loan agreement)
- A completed foreclosure is likely to have an impact on the borrower's income taxes
- California has two types of foreclosures
 - **Non-judicial foreclosure**
 - This is completed without the use of the courts
 - The **beneficiary** (lender) directs the **trustee** to begin a non-judicial foreclosure

Non-judicial foreclosure

- Notice of Default (NOD)
 - The NOD is **recorded**
- Within 10 days of recordation, a certified or registered copy of the recorded NOD is mailed to the borrower.
 - After **90 days pass**, a Notice of Sale (**NOS**) may be recorded.
 - This is advertised once a week for 3 weeks.
- On the date noticed for the sale, there is an auction held to sell the property.
 - A non-judicial foreclosure can be completed in as little as 111 days.

Non-judicial foreclosure

- The property is auctioned at a public sale
 - The buyer obtains title subject to any liens or encumbrances senior to the foreclosing lender's interest. These liens are not disclosed as part of the foreclosure process. Junior liens are eliminated.



Non-judicial foreclosure

- Bidders, other than the beneficiary, are required to show cash or certified checks for their bid amount before bidding.
- A **trustee's deed** will be provided to the successful bidder. This provides the buyer title, but not necessarily possession, at that time.
- The lender has **no deficiency rights** after a non-judicial sale.

Judicial foreclosure

- A judicial foreclosure is initiated by a lender having a lawsuit for foreclosure filed on its behalf.
- Due process, including discovery and a trial, then occur.




Judicial foreclosure

- Upon a court order in favor of foreclosure
 - The borrower's **reinstatement period** begins upon the filing of the lawsuit and it ends upon the granting of the court order.
- The lender must advertise the sale date for at least 21 days.
- An auction sale similar to the non-judicial auction discussed above, including no disclosures and subject to senior liens and encumbrances, is then held.


Judicial foreclosure

- The purchaser at the auction receives a Certificate of Sale.
- The borrower/owner continues to own and occupy the property until the redemption period is over.
- The **redemption** period begins upon the filing of the foreclosure lawsuit.
 - The redemption period ends 3 months after the sale if there is no deficiency; the lender received all sums due to it (this is very rare).
 - The redemption period ends **12 months** after the sale if there is a deficiency.




Judicial foreclosure

- After the end of the redemption period the owner of the Certificate of Sale will receive a **sheriff's deed**.
 - The new owner may now take possession or begin the legal process of taking possession of the property.
 - If the property is redeemed prior to the end of the redemption period, the holder of the Certificate of Sale receives their money back, along with interest.
- The lender may obtain a deficiency judgment against the borrower, unless the underlying loan was a purchase money loan or a seller carryback loan.
 - This is the only benefit of this significantly slower means of foreclosure, hence it is rarely utilized.




Reinstatement

- The loan documents are likely to have an acceleration clause within.
- The lender, in the NOD, will then demand that the entire loan, including delinquent interest, impounds, and costs of collection be paid to stop the proceedings.
 - California law supersedes the acceleration clause.
 - From the date of the recording of the NOD until **5 days** before the scheduled sale date, the lender must accept funds sufficient to bring the loan current and **reinstate** the loan.




Reinstatement

- The funds required would include:
 - All delinquent payments
 - All late fees
 - Reimbursement for any monies paid for unpaid property taxes or insurance
 - Costs of collection
- Upon payment of these sums, the foreclosure is canceled and the loan goes back to its original terms, it is reinstated. A notice of rescission will be recorded to reflect the cancellation



Redemption


- Redemption is the **full payoff** of a loan in foreclosure. This includes all of the sums listed as part of reinstatement plus the principal balance due.
- There is **no post-sale redemption** period for a non-judicial foreclosure.



Question

The advantage to a lender of the non-judicial foreclosure is

- A. it allows the lender to collect a deficiency judgment.
- B. it is fast.
- C. the lender is guaranteed to be paid in full.
- D. none of the above.



Answer

- B. it is fast.
- The non-judicial foreclosure could be completed in as little as 111 days. A judicial foreclosure is likely to take more than a year.



Deed-in-lieu

- A deed-in-lieu of foreclosure is where the borrower voluntarily gives the lender a deed to the property instead of having the lender complete a foreclosure.
 - Junior liens are not eliminated.
 - The lender usually negotiates for some of their expected deficiency to be paid to them, usually in the form of a promissory note (unsecured).
 - Because a lender's foreclosure would not likely yield a right to a deficiency judgment in California, this part of the deed-in-lieu is unusual in California. Income tax consequences may result.

Short sale

- A short sale would happen when the sales **proceeds are insufficient** to pay off the existing debt.
 - The lender would need to agree to accept the available funds as a payoff of the loan.
 - Since almost all California foreclosures would not result in a potential deficiency judgment, the lender would not receive additional compensation from the borrower.
 - The short sale may have an impact on the borrower's income taxes.




Fully amortized

- An amortizing loan will apply each payment to the principal and the interest.
- A fully amortized loan will be **paid in full** when it reaches maturity.


Partially amortized

- A partially amortized loan also has payments applied to the principal and the interest.
- A partially amortized loan matures before its payoff, hence there is a balloon payment. A large payment is due to pay off the remaining principal (balloon).




Interest only

- This loan has many names.
 - **Straight loan**
 - **Term loan**
- Each payment only satisfies the interest due.
- At maturity, the full balance is due and paid in a large balloon payment.



Adjustable rate loan (ARM)

- The loan contract will identify a starting interest rate and establish the date(s) for the rate to be changed and the payment recast.
 - The new interest rate will be calculated from a formula.
 - **Index + margin = interest rate**
 - Recast payment is the existing balance amortized over the remaining loan term with the new interest rate.
 - Caps may exist.



Adjustable rate loan (ARM)

- This may be a reasonable loan:
 - When interest rates are high and expected to be lower in the future
 - When the borrower does not expect to own the property for a long time

Question

In comparing a straight loan to a fully amortized loan,

- A. the straight loan has a higher payment.
- B. the fully amortized loan has a higher balloon payment at maturity.
- C. the straight loan has a lower payment and a higher balloon payment.
- D. the fully amortized loan has a lower payment and a lower balloon payment.

Answer

- C. the straight loan has a lower payment and a higher balloon payment.
- The fully amortized loan has a higher payment and no balloon payment.

Other loan types

- Construction loans
- Package loans
- Blanket loans
- Reverse mortgages
- Seller carrybacks





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Purchase money

- A purchase money loan is made **concurrently** with the acquisition of the property.
- Some or all of the loan proceeds are used to pay for the property.
- A residential purchase money loan for an owner-occupied property, no matter how it may be foreclosed on, is **not subject to a deficiency judgment**.

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Conventional loan

- Loan is made without any expectation of government assistance.
- Most residential loans can be up to **80%** loan-to-value (LTV).

Insured conventional loan


- Conventional loans with less than a 20% down payment, greater than an 80% LTV, will require Private mortgage insurance (**PMI**).
- PMI **insures** the lender against some, or all, of the principal loss should the property be foreclosed on and result in a deficiency.


FHA loan

- The Federal Housing Administration (FHA) **insures** lenders against some, or all, of the principal loss should the property be foreclosed on and result in a deficiency.
- FHA borrowers need as little as 3.5% as a down payment.

VA loan


- The Veteran's Administration **guarantees** loans made by lenders.
 - The guarantee covers the top 25% of loans up to a maximum.
- **No down payment** is required.






Cal-Vet loan

- More current active duty and retired military personnel may be eligible for Cal-Vet, as opposed to a VA loan.
- The California Department of Veteran's Affairs makes the loan.
- The California Department of Veteran's Affairs takes title to the property and uses a **Land Sales Contract**, also known as an Installment Contract or Contract for Deed, to document the loan.



Obtaining a loan

- Loans may be acquired through:
 - **Loan banker**—underwrites and funds the loan itself
 - **Loan broker**—acts as an intermediary between the borrower and banker, who underwrites and funds the loan



Question

A borrower paying MIP has a

- A. conventional loan.
- B. FHA loan.
- C. VA loan.
- D. reverse mortgage.

Answer

B. FHA loan.

MIP (mortgage insurance premium) is paid to FHA for their loan insurance.

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Lending Laws

Truth in Lending Act (TILA)

• Directs that only the price and **annual percentage rate** (APR) can be advertised without triggering full disclosure.

• APR

• Finance charges

• Payment schedule

• Total amount to be financed

• Total of all payments over the life of the loan

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Real Estate Settlement Procedures Act (RESPA)

- Established for consumers to receive full disclosures regarding loan costs.
- Prohibits kickbacks or referral fees for any aspect in the loan process.

TILA, RESPA Integrated Disclosure (TRID)

- Combined 2 disclosures from (TILA and RESPA) into 1 disclosure (**TRID**).
 - Loan Estimate
 - Within **3 days** from loan application
 - Closing Disclosure
 - At least **3 days** before the loan closes

Holden Act

- California Housing Financial Discrimination Act of 1977
 - Prohibits discriminatory lending
 - Prohibits **redlining**









Trust funds

- Purpose: to keep clients' funds separate from the broker's personal funds
 - Trust funds never belong to the broker.
 - For broker-owners of rental property, monies received on the broker-owner's property are not trust funds and **should not** be placed in the brokerage trust account.
 - However, brokers may keep up to **\$200** of their funds in the trust fund account to cover service fees and other bank charges.




Trust funds

- Commissions, fees, and other income earned by a broker and collectible from trust funds may remain in the trust account for a period not to exceed **25 days**.
- Income earned by brokers **must not** be taken from trust funds received **before** depositing such funds into the trust bank account.
- If a seller does not give a broker authorization to hold deposit money, then the broker accepts the deposit as an agent for the **buyer**.



Trust funds

- An associate licensee (salesperson or broker) who is authorized by the broker of record or an unlicensed employee who is bonded may be given written permission by the broker to withdraw money from the trust account.
- Advance fees
 - Advance fees are fees paid to real estate professionals in advance of any services rendered.
 - Advance fee agreements are required to be submitted to the DRE no less than **10 days** before being used.



Question

Broker A has a trust account with deposits from 6 separate client's funds. One account went into the negative but Broker A covered the discrepancy with personal funds.

- A. This is fine, as the account balances
- B. This is okay only with the approval of the other clients
- C. This is not allowable
- D. Broker A should quickly move away

Answer

C. This is not allowable

- The negative balance would be allowable with the agreement of the other clients; however, the broker adding personal funds to cover the negative is not.

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Record Keeping




Record keeping

- Licensed real estate brokers **must retain for three years** copies of all listings, deposit receipts, canceled checks, trust records, and other documents they execute or obtain in connection with any transaction for which a real estate broker license is required.
- An offer signed by a buyer and rejected by a seller is required to be kept for three years, like a contract.
- Alternatively, brokers may use **electronic image** storage technology to store records as long as certain requirements are met.


Record keeping

• When the licensee obtains the signature of any person to any contract about such services or transactions, the licensee must deliver a copy of the agreement to the person signing it at the time the signature is obtained.



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Disclosures and
Reports



Agent visual inspection


• Both the agent representing the seller of residential property consisting of 1-4 units and cooperating agents must conduct a **reasonably competent and diligent visual** inspection of the property offered for sale and to disclose to prospective purchasers all material facts affecting the value and desirability of the property.

• The extent of a reasonably competent and diligent visual inspection is limited to the accessible areas of the property.

• If the property is a dwelling unit in a condominium, planned development, or cooperative property, the visual inspection only includes the unit involved and not the common areas.


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Transfer Disclosure Statement (TDS)

- The transfer disclosure statement is required to be delivered by the seller or agent in property transactions involving **one to four** residential dwelling units.
- Real estate professionals are responsible for delivering it to the buyer as soon as is practical.
- If it is delivered to the buyer after execution of the offer to purchase, the buyer has the right to cancel within **three days** of delivery.




Transfer Disclosure Statement (TDS)

- Some sellers are exempt from the TDS requirement
 - Sellers who do not know about the property
 - Court-ordered sales such as **probate sales**
 - **Foreclosures**
 - Some buyers already know the property
 - Sale from one **co-owner** to another
 - Transfers to a spouse
 - There may be other more comprehensive disclosures
 - The Public Report




Transfer Disclosure Statement (TDS)

- Even if the seller is exempt from providing the TDS, a real estate licensee needs to provide their portion of the form providing the prospective buyer with full disclosure of the material facts that their investigations have unearthed.
- The seller's transfer disclosure statement form includes a provision for the brokers to indicate what the results of their reasonably competent and diligent visual inspection revealed.




Transfer Disclosure Statement (TDS)

- A licensee should **never** fill out the seller’s portion of the transfer disclosure statement.
- The seller is required to deliver a transfer disclosure statement, whether or not the seller is represented by an agent.
- Sellers (never the broker) complete the disclosure to the best of their current knowledge.
- Sellers and brokers must disclose visible and latent material defects (facts) to all buyers.



Transfer Disclosure Statement (TDS)

- Upon discovery of a material defect, immediately disclose it to all parties to the transaction or potential transaction.
- Example: A buyer’s broker notices unusual marks on the ceiling while showing a property. The broker should disclose their findings to the buyer and make sure the seller and listing agent are also notified.



Question

A property has been in escrow for 30 days and is scheduled to close escrow in 2 weeks. The buyer approved the TDS 2 weeks ago. The agent now discovers a defect that existed at the time of the TDS but was not disclosed. Which statement is correct?

- A. The buyer should be given a new TDS and new 3 days to approve it.
- B. No new TDS needs to be provided, as the defect was not known at the time of the prior disclosure.
- C. The buyer should be given a new TDS, but no new approval time.
- D. The escrow is automatically terminated.


Answer

A. The buyer should be given a new TDS and new 3 days to approve it.

If the condition was in existence, even if not known at the time of the original TDS, and discovered before the close of escrow, it must be disclosed. This will allow the potential buyer a new 3 days to approve the condition.


Natural Hazards Disclosure Statement

- Special flood hazard areas
- Very high fire hazard zones
- Wildland areas that may contain substantial fire risks
- Earthquake fault zone as indicated on maps
- Seismic hazard zones
- Sellers, not agents, required to comply with this law




Smoke Detector and Water Heater Bracing Statement of Compliance

- Seller typically pays for the installation of smoke detectors, carbon monoxide detectors, and water heater bracing, where required by law.
- Unless exempt, the seller, before close of escrow, provides the buyer with a written statement of compliance.




Disclosure of Ordinance Location

- Areas that were once used for military training and which may contain live ammunition, within **one mile** of a residential property that is being sold, requires the seller to give the buyer a written notice as soon as practical before transfer of title.



Reports

- A contract may specify if the buyer or seller will request and who will pay for various inspections or reports such as pest control, septic systems, wells, and natural hazard zone disclosures.
- Real estate licensees have a duty to deliver copies of any reports they have in their possession.
- Pest control reports are filed with the State Structural Pest Control Board.



Environmental disclosures

- Most environmental issues fall under the purview of the Environmental Protection Agency (**EPA**).
- Real estate professionals should have a working understanding of environmental issues and disclosure obligations. Additionally, they should:
 - be familiar with the environmental issues common to the area in which they practice,
 - look for signs of contamination and other issues, and
 - inform and recommend (but never advise) further investigation into the impact of environmental issues.

Environmental disclosures

- Lead-based paint has a federally mandated form to supply to a prospective purchaser.
- Asbestos, radon, carbon monoxide, mold, underground tanks, chlorofluorocarbons, electromagnetic fields, and methamphetamine labs are all environmental issues to be aware of, but there is no nationally mandated disclosure for these.
 - Should any of these be known or suspected, that should be disclosed on the TDS.

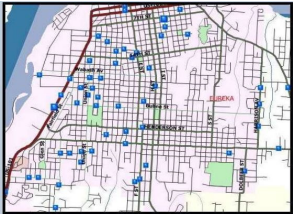
Stigmatized property

- Stigmatized properties are those that may be deemed undesirable due to activities that occurred there, such as suicide, murder, or criminal activity.
 - The underlying stigmatizing event should be disclosed on the TDS



Megan’s Law

- Megan’s Law requires the registration of sex offenders.
- Sellers and brokers have a duty to buyers to disclose the existence and location of the Megan’s Law database and any actual knowledge they possess regarding the location of sex offenders.



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Question

A report was prepared for Buyer "A". The escrow was later canceled. Must Buyer "B" be provided this report that they did not pay for and the report specifically forbids its disclosure and use by anyone other than the purchaser of the report?

- A. No, it is forbidden by the terms of the report.
- B. No, the seller believes that it contains factual errors and that the buyer should get their own report.
- C. Yes, any information known by the seller must be provided to the buyer.
- D. It should be provided to the buyer's agent who then decides if it is provided to the buyer.

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Answer

C. Yes, any information known by the seller must be provided to the buyer.

State law provides that the buyer be provided with any reports that the seller has. This overrides any provisions in the report disallowing its production to the new buyer.

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Fair Housing






Unruh Civil Rights Act

- The Unruh Civil Rights Act provides for equal accommodations and services in all **business establishments** in California regardless of age, sex, race, color, religion, ancestry, national origin, or disability (For all protected classes under Unruh, see www.dfeh.ca.gov/Publications/Unruh.htm).
- For a violation of the Unruh Act, the penalty can be up to three times the actual damages and not less than \$4,000, and if a real estate licensee, potential revocation of license by the DRE.




Unruh Civil Rights Act

- The Unruh Act defines a senior citizen as a person 62 years or older or one who is 55 years or older in a senior citizen housing development, which is specifically designed to meet the physical and social needs of senior citizens.




Holden Act

- The Housing Financial Discrimination Act of 1977 (known as the Holden Act), which is part of the Health and Safety Code, prohibits discriminatory loan practices on the part of financial institutions.
- Discriminating based on racial characteristics or trends in a geographic area is referred to as **“redlining”** and is illegal unless the particular case is necessary to avoid an unsafe and unsound business practice.




Holden Act

- This law applies to loans to purchase one-to-four unit owner-occupied residences and rehabilitation loans on one-to-four non-owner-occupied units.
- The law is administered by the California Department of Fair Employment and Housing (DFEH).



California Fair Employment and Housing Act

- The Fair Employment and Housing Act (Government Code) can require a seller who discriminates, to sell the home, if it is still available, or to sell or rent a like housing accommodation if one is available.
- Punitive damages of up to \$10,000 may be awarded, as well as actual damages.



Question

A salesperson owns a four-plex and lives in one of the units. They do not want to rent to families with children. They reject all applicants with children, without explanation. Which statement is correct?

- A. This is allowable, as long as they do not advertise that no children are allowed.
- B. Since they occupy a unit, they may do this.
- C. Since children are not a protected class, they may do this.
- D. They may not do this.

Answer

- D. They may not do this.
- Since they have a real estate license, none of the possible exceptions apply to them.

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Servicing Diverse
Populations


Growing diversity in California

- With the growing diversity of the California population, real estate licensees are increasingly called upon to make their services more widely available to diverse populations.
 - According to the 2020 US Census, the California population of people 65 years of age or older was 15%, up from 13% in the 2010 Census.
 - The Asian population in California was 16.3%, compared to 13% in 2010.
 - The Hispanic population in California was 39.4%, compared to 37.6% in 2010.



Growing diversity in California

- The proportion of the California population in which a language other than English is spoken at home has increased to 43.9%.
- As of 2021, more than half of the nation's foreign-born population lives in four states: California, New York, Texas, and Florida. With approximately 23% living in California alone.



Diversity categories

- Age
- Disability
- Ethnicity
- National origin
- Family status
- Mental illness
- Criminal background



The role of a Real Estate licensee is servicing a diverse population

- Real estate is a local commodity; however, not all buyers and sellers are local.
- Immigrants, foreign purchasers, and U.S. citizens with families who live in other countries represent a growing market for California real estate licensees.
- Partially due to COVID-19, foreign investment in US Residential real estate declined. However, in 2023, foreign investment in residential real estate was **53 billion dollars**.




Examples of how real estate licensees can service diverse clients

- Serving different cultures
 - Awareness of cultural values, such as reliance on family support systems, collective decision-making, spirituality, and respect for parents is important in real estate licensees serving diverse populations.
 - Be mindful of topics that may elicit highly sensitive reactions.
 - Ensure that the real estate office environment, including artwork, is respectful of cultural beliefs and values.




Examples of how real estate licensees can service diverse clients

- Identify community characteristics and needs.
- Visit local community centers, such as ethnic grocery stores, schools that teach in native languages other than English, and sports groups for the populations that the real estate licensee wishes to reach.
- Offer services to speak to local groups in a variety of settings. Where language could be a barrier, real estate licensees might ask community members to serve as translators when giving presentations. This kind of gesture can help to strengthen relationships within a target community.




Victims of domestic violence

- Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers.
 - According to the U.S. Bureau of Justice Statistics, 85% of victims of domestic violence are women.
- In a February 9, 2011, memorandum, HUD concluded that domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a basis for a lawsuit of sex discrimination under the Fair Housing Act and the Violence Against Women Act (VAWA).




Examples of fair housing cases involving domestic violence

- A victim was assaulted by her husband in their apartment. She obtained a restraining order against her husband, and he was subsequently arrested and jailed for the assault. She provided a copy of the restraining order to the property manager. The property manager then served her with a 24-hour eviction notice based on the incident of domestic violence.



Examples of fair housing cases involving domestic violence

- A victim of domestic violence obtained a restraining order against her abusive ex-boyfriend. Months later, the ex-boyfriend attempted to break into the apartment, breaking the windows and front door. The owner of the apartment evicted the victim and her children based on the property damage caused by the ex-boyfriend.



Examples of fair housing cases involving domestic violence

- A victim's ex-boyfriend continued to harass, stalk, and threaten her after she ended their relationship. He came to her apartment in the middle of the night, banging on the door and yelling. The building security guard was unable to reason with him. He left before the police arrived. One week later, the abuser came back to the building, confronted the same security guard, and shot him. The victim was served an eviction notice from the landlord based on this incident.

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Question

If an agent is directly asked about the racial makeup of a neighborhood, the agent should

A. honestly answer any direct question.

B. not answer, as it is not a material fact.

C. just provide the buyer with written statistics about the racial makeup.

D. fire the client.

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Answer

• B. not answer, as it is not a material fact.

• By law, the racial makeup of an area is not a material fact and its disclosure could only be for a discriminatory reasons.

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California Practice

Part 2



Truth in advertising

- Most of the rules and laws affecting advertising are enacted by national laws or national agencies' rules.




Mobile home advertising

- Mobile home ads should not state that the mobile home can be transported on California highways if it does not have the appropriate equipment to do so.
- Mobile home ads must be removed within 48 hours of the home no longer being available for sale.
- Real estate licensees cannot advertise that no down payment is required on a mobile home if a down payment is required or if the buyer finances the down payment.
- Real estate licensees cannot advertise or represent that a used mobile home is new.



Blind ads


- Real estate professionals advertising their lending services should state, "A Real Estate Broker-CA Department of Real Estate."
- The SAFE Act (Secure and Fair Enforcement Mortgage Licensing Act) mandates that real estate professionals involved with the selling/making of loans need to be registered as mortgage loan originators.



Question

A blind ad may be placed

- A. never.
- B. only with the permission of the Broker of Record.
- C. with prior approval from the DRE.
- D. if the agent is selling the property as a FSBO.



Answer

A. never.




Ethics

- Ethics refers to a system of moral principles, rules, and standards of conduct.
- Various organizations promulgate codes of ethics for the real estate business. The most common is the National Association of REALTORS® Code of Ethics, which is based on the golden rule of treating other people the way you would want to be treated.
- Exhibit a higher level of knowledge and competency than an unlicensed individual.


Ethics

- Protect the interests of clients and treat all parties fairly and honestly.
- Complete all state-mandated disclosures in a timely fashion.
- Fully explain to the client the obligations of the client and the broker in the transaction.
- Disclose all material facts promptly without fraud or misrepresentation.




Competence

- All real estate professionals are expected to know when they are not **competent** to perform a task. This includes the following:
 - Practicing outside their area of expertise (e.g., a residential broker selling commercial property or a city broker selling farmland).
 - Completing and presenting legal documents that are not fully understood by the broker.
 - A salesperson or broker becomes competent by taking classes and working with others who are knowledgeable in the area of practice.



Disclosure

- Real estate professionals are expected to fully disclose the following:
 - Whom they represent in the transaction
 - The obligations of all parties, regarding the disclosure of material defects
 - If they are a principal in the transaction
 - If there may be any environmental, material, or other issues requiring disclosure that might impact the property



Illegal practice of law

- A real estate license does not make someone competent to practice law.
- Real estate professionals must know when they need to recommend that the party they are working with should seek legal advice.
- Licensees should recommend the use of attorneys, accountants, and other appropriate counsel to buyers and sellers.
- Licensees are not allowed to give legal advice on any aspect of a real estate transaction.




Who needs a real estate license?

- A real estate broker licensee is a natural person or a legal person who **for another person** and a fee lists, sells, exchanges, manages, buys, rents, arranges loans, or negotiates options on real estate, business opportunity, or mobile homes previously registered (used) with the Department of Housing and Community Development.
- The fine for acting as a licensee without a license is \$20,000 for individuals and \$60,000 for corporations. Individuals may also be sentenced to up to 6 months in jail.

Who needs a real estate license?

- The Department of Real Estate will not issue or renew a full-term, four-year license to a person who is in arrears on child support. It may issue a 150-day conditional license, which will automatically be suspended, unless evidence is provided that the child support arrearage has been paid.




Who does not need a real estate license?

- Anyone dealing with one's own property, unless the person is in the business of buying and selling real estate paper
- A person who is deemed to be "in the business" of buying and selling real estate paper is required to have a real estate license when selling, acquiring for resale (not as an investment), or exchanging **eight or more** promissory notes secured by real property or real property sale contracts during one calendar year.
- A corporation dealing with its own property through its regular officers, provided they receive no special compensation



Who does not need a real estate license?

- Anyone holding a duly executed power of attorney
- Attorneys, while performing duties as attorneys-at-law
- Court-appointed persons (i.e., trustees, executors)
- An assistant, secretary, receptionist, or hostess, provided that person does not quote or discuss prices or terms
 - An unlicensed assistant may put together information for an ad, but the licensee must approve it.
 - If an unlicensed assistant solicits clients, both the assistant and the licensee are liable.



Who does not need a real estate license?

- An unlicensed assistant may not respond to inquiries from the web or telephone.
- Banks, savings and loans, escrow companies, and their employees

Partnerships

- There is no partnership license; however, a broker can be a partner with
 - another broker;
 - a salesperson subject to the supervision of the broker partner; or
 - a non-licensee, provided the non-licensee does not perform any acts for which a license is required.




Corporate broker’s license

- A corporate broker's license is issued in the name of the corporation.
- The corporation must identify the person who holds the broker's license as their designated broker-officer.
- The designated broker-officer may also have an additional license in the broker's name.

Duty to review

- The broker of record must review, oversee, inspect, and manage all documents that may have a material effect on the rights or obligations of a party to the transaction.
 - All documents signed by either a customer or client must be reviewed within 48 hours.
- The broker may delegate this authority in writing to another broker or a salesperson.




Fictitious business name

- The business must file a fictitious business name statement with the county clerk in any county in which the business is operating.
- This d/b/a (doing business as) statement must be renewed every five years.
- The business must provide the Department of Real Estate with a copy of the d/b/a filing.




Prepaid Rental Listing Service (PRLS) license

- A PRLS company supplies prospective tenants with listings of residential real properties and charges advance fees for these lists.
- A PRLS may be operated by either a real estate broker or a designated PRLS agent.
- PRLS agents must obtain a two-year license that is issued by the Real Estate Commissioner.



Salesperson's license


- A salesperson is a **natural person** who is employed by a broker, for a fee, to perform any of the acts the employing broker may perform.
- A salesperson can never work independently.
- The Real Estate Commissioner requires salespersons to have a written **employment contract** with their employing broker.
- A broker licensee can agree to work for another broker in the capacity of a salesperson but must have a written employment agreement and be supervised.



Question


A salesperson may have a fictitious business name registered with the DRE if

- A. the name they go by in their real estate career is different than that on their license.
- B. they are operating as a business.
- C. they have their own brokerage.
- D. they may never do this.



Answer

- A. the name they go by in their real estate career is different than that on their license.
- A salesperson may use a different name for branding purposes if they have a DBA on record.



Salesperson’s license

- Salespersons and brokers working for another broker are referred to as **associate licensees**.
 - Associate licensees have the same fiduciary obligations to clients and the same duty of honesty and fair dealing to third parties as the broker.




Real estate salesperson's license

- Education requirement
 - Successful completion of **three** semester-long college-level courses: Real Estate Principles, Real Estate Practice, and one elective course (e.g., Legal Aspects of Real Estate)
- Experience requirement
 - None

A photograph of a large, multi-story brick college building with a central arched entrance. Several palm trees are in the foreground, and a few people can be seen walking on the paved area in front of the building.


Real estate salesperson's license

- After passing the licensing exam (min. score is 70%), an applicant has one year to apply for a license.
 - All real estate salesperson licenses are issued for **four-year** terms.




Real estate broker's license

- Education requirement
 - **Eight** college-level courses
 - Five are mandatory
 - Three are electives
 - May be eligible to obtain credit for previous college classes
- Experience requirement
 - Two years of experience in a real estate-related profession, or a four-year college degree with a major or minor in real estate
 - Other requirements
 - All real estate broker licenses are issued for four-year terms.
 - Renewal of a broker's license requires the completion of 45 hours of continuing education.



License cancellation


- In the event of a death or the suspension, revocation, or expiration of a broker's license, the active status of all the broker's salespersons is canceled.
 - Cancellation is temporary. It is not the same as the revocation or loss of a license. It means the licensee cannot perform any acts for which a license is required.
- When licensees quit or are terminated, their licenses are canceled.
- Brokers must notify the Real Estate Commissioner within 10 days through a transfer notice form.
- If a licensee is fired for cause, a notice with a certified written statement of facts must be sent to the Commissioner.



Continuing education requirements


- Licensees must complete **45 hours** of DRE-approved **continuing education** consisting of
 - five separate three-hour courses in ethics, agency, trust fund handling, fair housing, and risk management;
 - a minimum of 18 hours of consumer protection courses; and
 - the remaining hours may be related to consumer service or consumer protection courses.
- Renewals for 1st and subsequent renewals for sales/brokers licenses are different. Please check to make sure you are taking the correct courses.

<https://www.kapre.com/real-estate/California/state-requirements>




Continuing education requirements

- Real estate brokers renewing their license for the first time must complete 45 hours of DRE-approved continuing education consisting of
 - six separate three-hour courses in ethics, agency, trust fund handling, fair housing, risk management, and management and supervision;
 - a minimum of 18 hours of consumer protection courses; and
 - the remaining clock hours may be related to either consumer service or consumer protection courses.



Continuing education requirements

- For subsequent renewals, all real estate brokers and salespersons must complete 45 hours of DRE-approved continuing education consisting of
 - one eight-hour survey course covering the six mandatory subjects (ethics, agency, fair housing, trust fund handling, risk management, and management and supervision) OR each of the mandatory subjects separately; and
 - a minimum of 18 clock hours of consumer protection courses; and
 - the remaining clock hours required to complete the 45 hours of continuing education may be related to either consumer service or consumer protection courses.



Continuing education requirements

- If the continuing education requirements are not met by the end of the four-year term, the license is canceled and the licensee has a two-year grace period to complete continuing education requirements, pay a late fee, and renew the license.
 - During the grace period, the licensee **cannot perform** any acts for which a license is required (including receiving compensation for licensed acts) until the continuing education is completed and the license is renewed.



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Parties

- Owner—a person or company who owns a unit and rents or leases it to another person.
 - The owner can be referred to as the proprietor or landlord (lessor) and the tenant as the resident (lessee).
- Tenant—a person or entity who has legal possession and use of real property belonging to another person.

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Owner’s implied covenant and warranty

- **Covenant of quiet enjoyment**—The landlord promises that during the term of the tenancy, no one will interfere with the tenant's right of possession.
- **Warranty of habitability**—The landlord is legally responsible for repairing conditions that affect the rental unit's habitability.

Tenant's duty

- The tenant's fundamental duty is to **pay rent** and to use the property for its intended and lawful purpose.

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Repairs



Duties and responsibilities


- The tenant is responsible for notifying the landlord of repairs needed.
- The landlord must make the repairs within a **reasonable** period.
 - Usually 30 days is considered to be reasonable, but a shorter period may be considered reasonable, depending on the situation.





Remedies available for neglect

- If the landlord does not make the necessary repairs to make the property habitable within a reasonable time, the tenant may have a choice of several remedies.
 - Repair and deduct
 - If the landlord doesn't make the repairs within a reasonable period, the tenant may either make the repairs or hire someone to do them.
 - The tenant may then deduct the cost of the repairs from the rent when it is due.
 - Repairs cannot cost more than one month's rent.




Remedies available for neglect

- The tenant should keep all receipts for the repairs.
- Defects must be serious and directly related to the tenant's health and safety.
- The tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
- Tenant cannot use the repair and deduct remedy more than twice in any 12 months.
- Abandonment (constructive eviction)
 - Tenant may vacate the property and be relieved of the obligation to pay rent for the remainder of the lease term.




Remedies available for neglect

- Examples of defects that might be serious enough for rent withholding include the following:
 - Collapse of ceiling
 - Presence of pests (i.e., mice, rats, cockroaches)
 - Lack of heat in part or all of the building
 - Blocked plumbing
 - Exposed or faulty wiring
 - Illegally installed or dangerous appliances




Remedies available for neglect

- The tenant will need evidence of the defects that require repair.
 - Photographs or videos
 - Witnesses who will appear and testify in court
 - Copies of certified letters informing the landlord of the problem
- Lawsuit for damages
 - A lawsuit can be filed in **small claims** court or superior court.
 - It can be filed without first trying another remedy, such as repair and deduct.



Remedies available for neglect

- If the tenant wins the lawsuit, the tenant may be awarded the following:
 - Actual damages
 - Special damages (costs that a tenant would incur such as having to stay in a motel during the repair)
 - Legal fees
 - Court order for the owner to abate the nuisance and repair the defect



Question

The tenant notifies the landlord that the carpet is ripped behind the sofa, where the sofa abuts the wall. If this is not fixed in 2 weeks,

- A. the tenant may pay for the repair and, up to one month's rent, deduct it from the amount due.
- B. the tenant has no recourse.
- C. the tenant may legally move out.
- D. the tenant may successfully sue.

Answer

B. the tenant has no recourse.

- This is not a health and safety issue. A reasonable time for repair has not lapsed.

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Termination of Tenancy




Tenant's notice to terminate

- No notice is required to terminate a **lease**.
- The tenant's notice to terminate periodic tenancy requires a time frame either specified by the written rental agreement or equal to the rental payment period (i.e., monthly rental payment has a 30-day notice; weekly rental payment has a seven-day notice), whichever is greater.
- The tenant may serve notice at any time during the rental period.
- The tenant must pay rent covering the notice period.




Owner’s notice to terminate periodic tenancy

- California has enacted state-wide residential rent control. Some cities and counties have added additional rent control rules over those imposed at the state level.
- Properties that are exempt from the termination portion of the rent control rules are:
 - Single-family residences (1 unit), or a condominium not owned by a Real Estate Investment Trust (REIT), Corporation, or a corporate-owned LLC
 - Duplex where the owner occupies one of the units
 - Mobile homes




Owner’s notice to terminate

- Dormitories
- Buildings less than 15 years old
- Rental properties that are subject to a pre-existing rent control ordinance
- There are several situations where an owner can provide a notice to terminate a tenancy
 - Fault
 - Delinquency in rent
 - Violated a provision of the lease/rental agreement
 - Committed waste on the property (material damage)




Owner’s notice to terminate periodic tenancy

- Used the rental property for an unlawful purpose (i.e., drug dealing, drug manufacturing, dogfighting, etc.)
- Committed a nuisance (substantially interfered with another tenant)
- Committed domestic violence or sexual assault against, or stalked another tenant or subtenant on the premises
- **Three-day notice** to fix the problem or quit




Owner’s notice to terminate periodic tenancy

- The name, address, and telephone number of the person to whom the rent must be paid
- How to make a payment (if failure to pay rent is the reason for the notice) and where to make the payment (an address)
- If the violation is other than failure to pay and it can be rectified, the notice must indicate how proof of rectification can be provided.
- If the violation cannot be fixed, the notice is just a three-day notice to quit.



Owner’s notice to terminate periodic tenancy

- No fault termination of estate
- A tenancy of more than 12 months cannot be terminated without fault by the tenant unless one of the following exists:
 - The owner or a family member of the owner is to occupy the premises (rental agreement or lease must allow for this)
 - Compliance with a government order
 - Intent to demolish or substantially remodel the premises (for which a permit is required)



Owner’s notice to terminate periodic tenancy

- The tenant must be provided a **60-day** notice
 - In some cases, the tenant must be provided relocation assistance or the last month rent free.
- A tenancy of less than a year may be terminated without cause and with a **30-day** notice (assuming the end of the term has been reached)
- All of the above may be superseded by more stringent county or city regulations.
- Should the tenant not vacate within the 30 or 60-day time frame, the tenant may then be provided with a 3-day notice to quit

Unlawful detainer

- If the time has lapsed after a 3-day has been served and the remedy, if any, has not occurred, then the owner may begin the unlawful detainer proceedings (eviction).
 - Their estate has now become an **estate of sufferance**.
- An unlawful detainer lawsuit is filed.

Unlawful detainer

- The tenant must then be served a summons
 - Personal service
 - Substituted service
 - Post and mail




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Security Deposit






Security deposits

- As of July 1, 2024, new limitations on security deposits are in effect.
 - Owners are exempt from this change if:
 - they own no more than 2 residential rental properties with 4 or fewer units in total; and
 - their ownership interest is as a natural person, an LLC, or as a family trust.
 - If exempt, they may request up to 2 months rent as a security deposit.



Security deposits

- Owners may request a maximum of **1 month's rent** as a security deposit (residentially; there are no limits on commercial properties).
- The purposes of a security deposit are the following:
 - Pay for unpaid rent after the tenant has vacated the premises
 - Pay for cleaning the unit when the tenant moves out (back to its original condition when the tenant moved in)
 - Repair of damages (other than normal wear and tear) caused by the tenant or tenant's guests
 - If the rental/lease agreement allows it, the cost of replacing furniture, furnishings, and keys



Refunds of security deposits

- Under California law, security deposits cannot be referred to as nonrefundable.
- Under California law, the landlord has **21 calendar days** after a tenant moves out to
 - send the tenant a full refund of the entire security deposit, or
 - mail or personally deliver to the tenant an itemized statement (including receipts) that lists the amounts of any deductions from the security deposit and the reasons for the deductions, with a refund of any amount not deducted.



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Classes of property

- Property is either real or personal. It is essential that real estate professionals know the difference between the two.

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Real property

- Real property, including the surface of the earth
- Improvements on the surface of the earth
- Surface rights
- Subsurface rights
- Air rights
- Appurtenance



Personal property

- Personal property is everything owned that is not real property. The key factor is it is considered "movable". Personal property is also know as "chattel"




Special types of personal property


- Emblements:** Annually grown crops by a tenant farmer on leased land. The crop is considered the **personal property** of the tenant even if the lease ends before the harvest. It is essential if the land is being sold that the new buyer is aware of the existing lease agreement.



Special types of personal property

- Trade fixtures:** Personal property annexed or affixed to leased premises by the tenant as a necessary part of the tenant's trade or business. At the termination of the lease, the tenant can remove the items, but must return the property to the owner in the same condition they received it.
- If the tenant leaves before the end of the lease term, the owner can claim property left behind through a process called accession.






Question


What does real property include?

- A. Appurtenances, rights, personal property
- B. Rights, personal property, fixtures
- C. Fixtures, appurtenances, rights
- D. House, barn, driveway, tractor




Answer

C. Fixtures, appurtenances, rights




Property characteristics-physical

- **Immobility**—the geographic location of a tract of land is fixed; it is immobile. You cannot move land.
- **Indestructibility**—land cannot be destroyed.
- **Uniqueness**—no two parcels of land are alike.



Property characteristics-economic


- **Scarcity**—although there is a substantial amount of unused land supply, in a given location can be limited.
- **Improvements**—placement of an improvement on a parcel of land and affects value and use of neighboring parcels.
- **Permanence of investment**—sale of a particular parcel of land can take considerable time. Land is **not** a liquid asset.
- **Area preference**—people's choices and desires for a given area can make one site more desirable than another.



Question

Supply and demand impact the price of property in which of these examples?

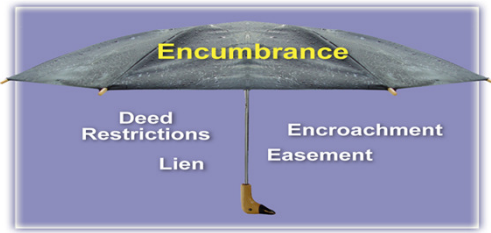
- A. High demand/low supply
- B. High supply/low demand
- C. Supply and demand are equal
- D. All of the above




Answer

- D. All of the above
- All of these cases would impact the price of property.
- High demand/low supply = prices go up
- High supply/low demand = prices go down
- Supply and demand are equal = stabilized prices

Encumbrances



Encumbrances




- Definition: An encumbrance is a nonpossessory interest in someone else's land. While it does not affect the size of the lot, it might reduce or impair the property owner's rights.


Deed restrictions-covenants

- Covenants can be found in real estate documents such as leases, mortgages, contracts for deed, and deeds. Covenants include words such as *promise*, *undertake*, *agree*.
- Covenants are unconditional promises contained in the contract, the breach of which may entitle a person to damages.

Deed restrictions-conditions

- Conditions may be either **precedent** or **subsequent**.

A **condition precedent** must be performed before a right or an estate is gained. Example: *On your 25th birthday, I will transfer title to XYZ property to you.* 


A **condition subsequent** causes a right to be lost or an estate to be terminated upon it's occurrence. Example: *You may not grow fruit on this land that will be used in the creation of any alcoholic product.* 

Deed restrictions

- Private restrictions are placed in the deed by the developer to enhance the value of the property. They typically expire after a noted period of time. Examples: No street parking, all fencing must be painted white, all roofs must be tile, you must have front landscaping, etc.
- No restriction that violates the law is enforceable. Example: *race, religion, disability, familial status, and ancestry to name a few.*

Specific liens

- A Lien is a charge or claim that one person has on the real or personal property of another as security for a debt.
- Types of specific liens: These liens are on a named parcel or parcels only and do not impact other property an individual may have.
 - Real property taxes
 - Assessments
 - Loans using the property as security
 - Mechanics liens



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General liens

- A general lien is a statutory lien that applies to ALL of the real and personal property the individual owns now and in the future.
- It gives the right, with some exceptions, to have the debtor's real and personal property sold to satisfy the debt.
- Unlike a specific lien, this is issued in the name of the debtor, not the property.


Encroachment

- An encroachment is an improvement that extends onto real estate belonging to another, without their consent. You may require the services of a surveyor to confirm property lines.



Easement


- A **nonpossessory** interest in the land of another. An easement is frequently used for ingress (enter) and egress (exit) across someone else's property. The land that is burdened with the easement is called the servient parcel, while the land that benefits from the easement is called the dominant parcel.
- In this example let's say A owns the property and B has an easement.



- A = servient parcel
- B = dominant parcel




Easement appurtenant

- An easement appurtenant runs with the land. If you buy or sell your property and there is an easement, you receive the benefit or burden. Only the servient party can release the easement if it is no longer needed.



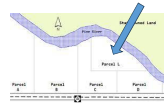
Easement in gross

- With an easement in gross, there is NO dominant party. All parties are servient. This is typically used by a utility company.



Easement by necessity

- As you can see by looking at parcel L, there is no way to get in and out of the parcel. It is considered “**landlocked**”. If you are successful in negotiating with your neighboring parcels, you may be fine. If not, you would have to go to court and the judge would determine the best route for you to use to enter and exit your property. This easement continues only as long as it is necessary. Should access become available, the easement would be eliminated.



Easement by prescription


- A right acquired by an adverse user to use the land of another. To gain such a right the adverse user must be using the land without permission, hostile, open, notorious and continuous for the statutory period. In California that period is **5 years**.

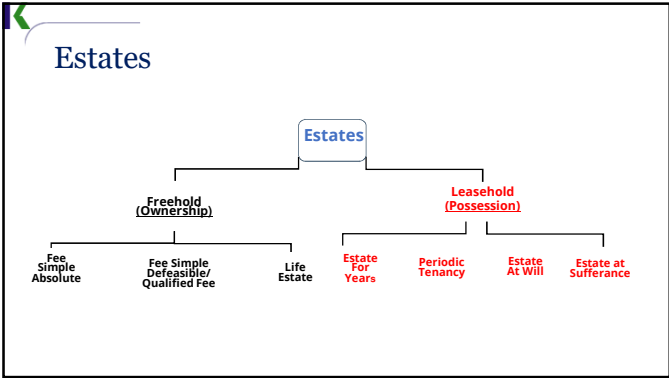
Easement by prescription

- At the end of the **5-year** period, the adverse user may file a claim in court to defend their right to use the land. Once the judge hears both sides, the judge will make a decision. If the judge rules in favor of the adverse user, they now hold an easement across the land of the defendant.
- An important note is this easement can be lost by non-use for **5 years**. It will only transfer with the land if this was an easement by necessity.

Easement by prescription

- A method to prevent a prescriptive easement is for the owner to construct a wall, fence, or other barrier that physically excludes the neighbor from using the owner's property.





Fee estates

- **Fee simple absolute:** HIGHEST interest you can have in property ownership.
- **Fee simple defeasible:** There is a condition in the deed that you must meet prior to receiving the property (subsequent) or rules you must follow after you own the property (precedent). Each create a **defeasible estate**, which means you can lose the property or never receive it if the condition is not followed or met.

Fee estates

- **Life estates** are based on someone's life. It may be the grantee or another person. This person is called a **life tenant**, however they are actually the owner, as long as they are alive. They have all of the rights and obligations an owner would have. Upon their death, the estate will pass, depending upon the original agreement, back to the grantor; this is called an **estate in reversion**. The owner now holds a fee estate. If it moves to another person other than the grantor or grantors' heirs, it is called an **estate in remainder**, which becomes a fee estate. With the extensive use of wills and trusts, life estates are not as popular as they once were.

Example of a life estate in reversion

Estate in Reversion
Now holds a Fee Estate

Grantor

Life Tenant

Reversion Estate

Example of a life estate in remainder

Grantor

Life Tenant

Remainder Person
FEE estate

Legal descriptions of property

- There are three methods of legally describing the boundaries of property.
 1. Metes and bounds
 2. U.S. government survey
 3. Lot, block, and tract

Metes and bounds

- **Metes** – measures in feet, compass degrees
- **Bounds** – shape or boundaries
- Monuments – fixed objects that serve as reference points for the surveyor when setting boundaries (can be natural or artificial)
- Begins and ends at point of beginning (POB)

Metes and bounds

- It is the only description that uses starting “at” or commencing “at”
- The description must completely encircle the property
- Particularly useful for identifying an irregular-shaped parcel
- Measure in a clock-wise direction

A diagram illustrating a metes and bounds survey. It shows a closed, irregular polygonal boundary. The vertices of the polygon are marked with dots. Each side of the polygon is labeled with a bearing and a distance. For example, one side is labeled 'S 10° 15' 00" E 100.00 FEET'. Another side is labeled 'S 89° 45' 00" W 150.00 FEET'. The diagram also shows a 'POINT OF BEGINNING' at one vertex and a 'POINT OF END' at another vertex, with a line connecting them labeled '100.00 FEET'. The area inside the polygon is labeled 'THE ACRES'.

government/rectangular survey

- The rectangular (government) survey is a system developed by the United States government that locates a parcel of land within a grid system.
- Meridian and base lines are large imaginary reference lines drawn every six miles. Meridian lines go N/S, while base lines go E/W.

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Government rights-memory aid

- Certain government rights over real estate are superior to an individual owner’s property rights. The government has the right to:
 - **P**olice power – decide on land use
 - **E**minent domain – take privately-owned real estate for public use
 - **T**axation – impose property taxes
 - **E**scheat – take title to abandoned or “unowned” realty



Police power


- Planning, zoning, building codes are all examples of **police power** at the local level of government.
- This governmental power determines how land can be **developed** and might include legal use of the property, lot sizes, setbacks, building heights, environmental protection, and density.



Question


Which of the following is not considered a legal description?

- A. U. S. government survey
- B. Lot, block, and tract
- C. Metes and bounds
- D. Street address




Answer

- D. Street address
- A street address is not considered a legal description. It is a an informal description.




Eminent domain

- The US Constitution gives the government the right to **“take”** private land for public use. This power can be exercised at the federal, state, and local level. However, the government **must pay compensation** for the property (value plus damages).




Eminent domain

- Eminent domain is one example of involuntary alienation, meaning the owner did not agree to give up title to the property.
- A government entity exercises the power of eminent domain through the courts in a legal process called **condemnation**.



Real property taxes

- Property taxes are paid at the local level where the property is located. The formula for calculating property taxes is up to the state, and based on the assessed value (not the market value) of the property. These taxes are enforced by a foreclosable lien, meaning the property can be lost through forfeiture, if property taxes are not paid.
- Property taxes have priority and are senior to all other liens.



Escheat

- Under federal and state law in the USA, all property must be owned, so if the original owner or their heirs are not found, all real and personal property will revert to the state after a statutory period.
- Escheat is the government’s **reversionary right** when a property is **abandoned** or when an owner dies intestate (no will) and **without heirs**.



Public controls-zoning

- Most counties create zoning classifications to implement the master plan. These may include things such as:
 - Residential
 - Commercial
 - Industrial/manufacturing
 - Agricultural
 - Mixed

Question


Which of the following have the right to create zoning in your local municipality (city or county)?

- A. The local community
- B. The state
- C. The federal government
- D. The owner

Answer

- The local community
- This is part of police power and the right is given to the local municipality.

Private controls-bundle of rights




Bundle of rights

- An ownership concept describing all the legal rights that attach to the ownership of real property, including the right to sell, lease, encumber, use, enjoy, exclude, and devise by will. These rights also include the rights of use, occupancy, cultivation, along with exploration.
- The rights to license, dedicate, give away, share, mortgage, and trade or exchange. When purchasing real estate, the buyer actually buys the rights previously held by the seller, except those that are reserved or limited in the sale.


Water rights-appropriation

- The government controls water rights and grants permits for the beneficial use of water, such as irrigation, under the doctrine of prior appropriation.




A

RIPARIAN OWNER



B

1st Appropriator

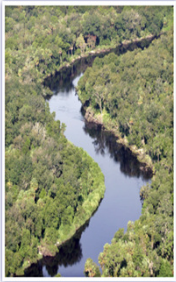


C

2nd Appropriator

Riparian rights

- Rights and obligations that are included in ownership of land adjacent to or abutting on watercourses, such as streams and rivers.
- Memory tool is R = River




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L

Littoral rights

- These rights are associated with land that is bordering on the shore of a sea, ocean, or lakes.
- Memory tool is L = Lake



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Transfer of Property



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Ways to transfer real property

- Voluntary deeds
- Involuntary deeds
- Wills
- Trusts
- Adverse possession




Elements of a valid grant deed

1. Must be in writing.
2. The grantor must be sane and sober and legally capable to execute the conveyance.
3. The grantee must be named (they only need to be a living person/corporation).
4. There must be an “adequate” description of the property.
5. There must be a granting clause.
6. The deed must be signed by the grantor.



Warranties in a grant deed


- The grantor makes **implied warranties** in executing a grand deed. These are items the grantee must assume to be true, or the deed will be meaningless. Implied warranties are legally enforceable, though they are not mentioned in the deed. The grantor warrants:
 - The grantor’s interest in the property has not already been conveyed.
 - There are no undisclosed encumbrances on the property, such as tax liens, brought about by the grantor or any person who might claim title from the grantor.



Question


In a grant deed, the grantor/seller makes which implied warranties?

- A. The grantor has not already conveyed the property.
- B. There are no encumbrances on the property.
- C. All encumbrances will be disclosed.
- D. Both A and C are correct.




Answer

- D. Both A and C are correct.
- The seller/grantor does not warrant there are no encumbrances.




Answer

- Example:
 - A is the grantor and sells to B. **While in escrow**, B sells to C. B would sign the grant deed even though B is not the current owner. As soon as title transfers to B, it will pass to C.



Various types of deeds


- **Deed in lieu of foreclosure** – deed given to the lender instead of them foreclosing. Lender is liable for all encumbrances on the property.
- **Gift deed** – in exchange for love and affection
- **Quitclaim deed** – grantor gives up any rights they may have. No warranties
- **Reconveyance deed** – received when you pay off the loan; financed by a trust deed and promissory note
- **Sheriff's deed** – sold by court order
- **Trust deed** – financing instrument



Question

What is it called when real estate is transferred from one owner to another?

- A. Subdivision
- B. Diversification
- C. Alienation
- D. Acquisition




Answer

C. Alienation


Alienation is the act of conveying real estate ownership to someone else.

Acquisition is receiving (acquiring) real estate ownership from someone else.




Question

Deeds are typically used to transfer real estate. What is necessary for a valid deed?




- A. Signature of the grantor
- B. Property description, notarization, date
- C. Signature of the grantor, property description, granting clause
- D. Signature of the grantee, property description, date




Answer

- C. Signature of the grantor, property description, granting clause
- A date and notarization are **not** requirements of a grant deed.
- The requirements for a deed to be valid include:
 1. The **signature of the grantor** who is conveying an interest in the real estate to someone else.
 2. A **property description** must be an “adequate” description (i.e., one that permits an identification of the specific parcel of real estate).
 3. Some words to show the grantor’s intent to give up title: A **granting clause** (e.g., words such as grant, convey, etc.)




Deeds

- Assuming a deed is otherwise valid, it still does not transfer title until it is both:
 - Delivered by the grantor (meaning the deed has passed out of the grantor’s control while the grantor is alive. There must also be an intention to convey the property).
 - Accepted by the grantee (as evidenced by possession of the deed, encumbering the title, or any act demonstrating ownership (e.g., possessing the property)).




Deeds

- Real property documents are recorded in the *county where the property is located*, typically a county recorder’s office.
- Recording or filing a document in the county recorder’s office is deemed to be **constructive notice (to all the world)**.



Transfer of property

- Title insurance is a comprehensive indemnity contract under which a title company warrants to make good, a loss arising through defects in title to real estate or any liens or encumbrances. Unlike other insurance policies, it protects you from something that occurred in the past that shows up in the future.
- Fannie Mae and Freddie Mac require title insurance on every loan they purchase.




Title insurance coverage

- The title company will issue a policy, if satisfied with the investigation of public records and all other material facts. Generally, a title insurance policy protects the insured against losses arising from such title defects (“hidden risks”).
 - Forged documents
 - Undisclosed heirs
 - Misfiled documents
 - Confusion arising from similar names
 - Incorrectly given marital status




Title insurance coverage

- The title insurance company will agree to defend the policyholder’s title in court against any lawsuits that may arise from defects covered in the policy. A title insurance policy generally consists of three sections.
 1. The agreement to insure the title and indemnify against loss
 2. A description of the estate and property being insured
 3. A list of conditions and exclusions of the policy




Uninsured exclusions

- Rights of parties in possession (covered in the lender's policy)
- Encroachments (covered in the lender's policy)
- Taxes and assessments not yet due or payable
- Zoning and government restrictions
- Certain water rights and unpatented mining claims



Title insurance


- Title indemnity is made as of a specific date. There is a one-time premium paid, and the coverage continues until the property is conveyed to a new owner. It DOES NOT run with the land.
- There are two types of policies
 1. **Owner's policy**, known as California Land Title Insurance or CLTA.
 2. **Lender's policy** protects the lender. It covers everything an owner's policy would cover and additional coverage for **parties in possession and encroachments**. In California, we call this policy, American Land Title Association or ALTA.



Question


Which of the following is covered by the extended (lender) policy of title insurance?

- A. All risks typically covered by the standard policy (buyer's)
- B. Unrecorded liens and encroachments
- C. Parties in possession
- D. All of the above



Answer


- D. All of the above
- **Extended title insurance (ALTA)** policies typically cover all risks typically covered by a standard title insurance (CLTA) policy (i.e., forgery and fraud; matters of record; improper delivery; lack of capacity) plus unrecorded liens and encroachments; and parties in possession (e.g., adverse possession).



Question


A zoning violation is a risk covered by which type of title policy?

- A. CLTA
- B. ALTA
- C. BLTA
- D. None of the above




Answer

- D. None of the above
- Zoning violations are not covered by any title insurance policy.




California property taxes

- California property is protected by Proposition 13.
- This means when a buyer purchases a home, they are reassessed 1% of the sales price plus any approved assessments already on the property.
 1. Sale of the property (1% of the sales price)
 2. Construction on the site that requires a permit
- There is a built-in 2% inflation factor, which we will discuss in the next slide.




Tax aspects

- In California, we have Proposition 13. This means when a buyer purchases a home, they are assessed 1% of the sales price plus any approved assessments already on the property as the beginning point for their tax bill. Each year, if you do not sell the property, the assessment goes up by a 2% inflation factor.
- Example: 100,000 SP x 1%= \$1,000 property tax
Year 2. \$100,000 x 2%= \$102,000 base x 1%= \$1020 tax
Year 3. \$102,000 x 2%= \$104,000 base x 1%= \$1040 tax



Tax aspects-home improvements


- If you get a permit to improve your home, you must notify the tax assessor within 90 days. You will be reassessed up to the value of the improvement.
- Example: Base prior to permit for a \$50,000 swimming pool
 - \$100,000 x 1 % = \$1,000
- After improvement
 - \$150,000 x 1% = \$1,500



Question


When is real property is reassessed?

- A. Upon the sale, it is reassessed at 1% of the sales price and this is the tax base for the new owner.
- B. If you make an improvement, you must report it to the tax assessor, and your tax bill will reflect this change.
- C. Both A and B are correct.
- D. Only when you sell your real property




Answer

- C. Both A and B are correct.
- The buyer will receive a supplemental tax bill.




Special assessments

- Special assessments (bonds) are levied only on “specific” parcels of real estate that will benefit from a proposed public improvement, as opposed to a general tax on the entire community. Because the proposed improvement will only enhance the value of the affected homes, only those in a given area will pay this special lien.
- Most special assessments must be voted on and approved by the district that is being improved.
- Special assessments may be changed by front foot, square foot, or in some cases, the increased value of the property after the improvement.



Mello-Roos liens


- Mello-Roos is a special tax assessed on property owners in California to finance infrastructure projects, services, and facilities with a specific district. It is “not” based on the value of the property, therefore if the property increases in value, the tax does not change. It can be levied on property that receive no direct or indirect benefit from the lien. It may last as long as 10-30 years.
- The **seller** is required to disclose if they live in a Mello-Roos area. As it does not appear on every county's tax bill.



Question

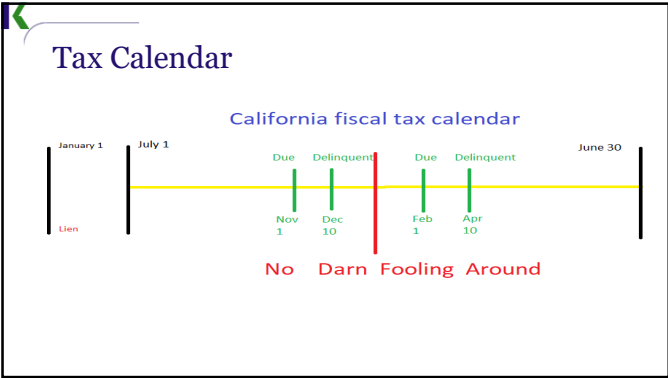
Taxes against a specific group of properties that benefit from public improvements are

A. special assessments.
B. property taxes.
C. Proposition 13.
D. documentary transfer tax.



Answer

- A. special assessments.
- **Special assessments** are taxes (charges) levied against a specific group of properties that **benefit** from public improvements. Examples include: sewers and street repairs, streetlights, underground electricity wires, etc. They are specific liens on each property, until paid.
- The other answer choices are incorrect. **Property taxes** do not have to be approved by the voters. A **documentary transfer tax** is a one-time tax that is imposed by the counties (and some cities) on the transfer of real estate. **Proposition 13** limits the amount of county-imposed property taxes to 1% of a property's assessed value.




Question

Which of the following statements is true for the tax year 2023-2024?

- A. The taxes due become a lien, if not paid by April 10, 2024.
- B. The taxes for the tax year must be paid in full by December 10, 2023, to avoid a penalty.
- C. A lien for the taxes is placed on the property in January 2023.
- D. A lien might be recorded for taxes due on June 30, 2024.


Answer

- C. A lien for the taxes is placed on the property in January 2023.




Ways to lower property taxes

1. Decline in value (Prop 8) "caution"
2. Calamity/property destroyed
3. Disabled veterans' exemption (\$4,000)
4. Homeowner's exemption (\$7,000)
5. Non-profit exemption
6. Transfer between family members
7. Transfer of base year value to replacement dwelling
8. Assessment appeal




Transfer tax base-over 55 years of age

- Proposition 19 allows eligible homeowners to transfer the taxable value of their existing home to their new replacement home of any value (subject to conditions) anywhere within the state, up to three times. The owner must be at least 55 years of age.
- This law has changed several times over the years. So make sure you do not advise clients about tax consequences. They should get this information directly from the tax assessor or their tax accountant.




Probate

- The formal judicial proceeding to prove or confirm the validity of a will, to collect the assets of the decedent's estate, to pay the debts and taxes, and to determine the persons to whom the remainder of the estate is to pass.
- Existence of a will does not avoid probate; it does, however, specify the disposition of the testator's property, rather than have it pass by intestate succession under the laws of the state.




Types of vesting

- Vesting or “title vesting” how you hold title to real property. It refers to your legal rights to sell, refinance, or transfer your property by will.




Severalty

- Tenancy in severalty signifies **sole ownership of property**, which means it won't be automatically transferred to heirs.
- The term comes from the root word severed from or all alone.
- You can will your property if you hold title in severalty. Or place it into a trust.




Tenants in common

- Tenants in common is the default method of holding title in California for unmarried parties if another method is not stated in the deed.
- There is only one unity in tenants in common, the **right of possession**. Even if you own 1%, you have the right to move about the land or build. As you own 1% of the whole, it is not a defined interest.
- You can sell, lease, encumber, give away and will your interest without the other tenants’ permission.




Joint tenancy

- Joint tenancy is a very unique method of holding title. It has the “right of survivorship”, which means as each owner dies the remaining interest passes to the other joint tenants.
- There are four (4) unities in joint tenancy.
 1. **Time (you received it at the same time)**
 2. **Title (you received it from the same deed/will)**
 3. **Interest (you each have equal interest in the property)**
 4. **Possession (you each have an equal right of possession)**



Joint tenancy

- In order for you to hold title in joint tenancy, not only do you require the four (4) unities, you must also state in the deed your **intention** “as JT or in JT”. Without your intention stated, title will default to tenancy in common.
- You can sell, lease, encumber, or give away your share without consent of the other parties to the deed, **but you can not will** it. If you do, the deed supersedes the will.



Community property

- Another common way for married parties to hold title in California is community property. Californians are able to hold title in this manner due to the **Treaty of Guadalupe Hidalgo**.
- Feb 2, 1848, ended the war between the U.S. and Mexico.
- One characteristic of a community property system is equality. The recognition of the principle of equality between husband and wife means equal ownership of community property, regardless of actual economic contribution each spouse makes to the community.



Community property


- If you are married or a registered domestic partner in California, you can elect to hold title as community property. You have the right to will your share, if you do not, it will pass to your spouse or domestic partner. You will have probate process, because it indicates ownership interest but doesn't indicate how the property should be conveyed in the case of death of one owner.



Question

Who can hold title as *community property* in California?

- A. Married heterosexual parties
- B. Married same-sex parties
- C. Registered domestic partners
- D. All of the above



Answer

D. All of the above

Married heterosexual parties, married same-sex parties, and registered domestic partners all have the right in California to hold title in community property.



Community property with right of survivorship


- Community property with the right of survivorship is a blend of the best parts of community property and joint tenancy. You give up your right to will your share and in exchange, it passes to your spouse or domestic partner without probate upon the death of your partner or spouse.



Question

Due to the benefits that community property with the right of survivorship hold in California, which of the following should you do?

- A. Advise all of your married and domestic partners to hold in this manner
- B. Advise only your married partners to seek legal advise as to the best way for them to hold title
- C. Advise your married partners and registered domestic partners to seek legal advice as to the best way for them to hold title
- D. None of the above



Answer

- C. Advise your married partners and registered domestic partners to seek legal advice as to the best way for them to hold title
- This is the best way to ensure they meet their specific long-term financial planning goals.
- You are not to suggest any method of holding title as this is considered legal advice.
